

FILED BY Cre D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

MUELLER COPPER TUBE PRODUCTS,
INC.,

Plaintiff,

vs.

PENNSYLVANIA MANUFACTURERS
ASSOCIATION INSURANCE COMPANY,

Defendant.

No. 04-2617 MaV

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE REPLY

Before the court is the October 13, 2005 motion of the plaintiff, Mueller Copper Tube Products, Inc. ("Mueller"), for leave to file a reply related to its motion to file an amended and supplemental complaint. Defendant, Pennsylvania Manufacturers Association Insurance Company ("PMA"), opposes the motion.

Mueller argues that it should be permitted to file a reply because PMA's response raised an argument that was not addressed in Mueller's brief in support of the motion and could not have been reasonably anticipated. Specifically, PMA argued in its response that Mueller's motion to amend should be denied as futile because applying Pennsylvania law to PMA's allegedly bad faith conduct would violate Tennessee public policy. Mueller claims that this argument is not well-founded and believes that a short reply would

help the court resolve the issue.

In response, PMA argues that Mueller's motion for leave to file a reply should be denied because it does not comply with the Local Rules. Specifically, Mueller did not file a certificate of consultation or a proposed order with its motion. PMA also argues that Mueller's motion for leave to file a reply should be denied because it does not raise any new issues for the court's consideration. According to PMA, the proposed reply does not cite or discuss any law that was not contained in the previously filed motions and memoranda. PMA also contends that Mueller should have been able to anticipate the arguments it raised in its response because the response was premised on two issues raised in Mueller's brief: the applicable state law and the issue of futility of amendment.

Mueller's motion did not comply with the Local Rules. Although Mueller has still not filed a proposed order, Mueller attempted to correct its error by filing a statement regarding consultation on October 17, 2005. In that statement, Mueller's counsel stated that he unintentionally neglected to consult with opposing counsel regarding PMA's position on the motion requesting leave to file a reply. On October 14, 2005, the day after Mueller filed its motion, Mueller's counsel consulted with PMA's counsel and confirmed that PMA opposes the motion. Because Mueller

attempted to comply with the Local Rules after its motion was filed, this court will not deny the motion on such grounds. Mueller is directed, however, to comply with the Local Rules in the future.

This court finds that PMA's response raised an issue that was not specifically addressed in Mueller's brief: whether the proposed amendment is futile because applying Pennsylvania law to PMA's allegedly bad faith conduct would violate Tennessee public policy. Additional briefing on this issue is helpful to the court. Accordingly, Mueller's motion for leave to file a reply is granted. Mueller shall file its reply with the clerk of court and serve it on PMA on or before October 26, 2005.

IT IS SO ORDERED this 19th day of October, 2005.

A handwritten signature in cursive script, reading "Diane K. Vesco", written in dark ink.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

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Honorable Samuel Mays
US DISTRICT COURT